IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.P. No.71 of 2003
Decided on : 28.07.2010

M/s Punjab National Fertilizers & Chemicals Ltd.
... Petitioner

versus

M/s Punjab Alkalies & Chemicals Ltd.
... Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA

Present : Mr. Neeraj Khanna, Advocate
for the petitioner.

Mr. Arun Nehra, Advocate
for the respondent.

Hemant Gupta, J(Oral)

This order shall dispose of Company Petition No.71 of 2003 filed under Section 446 of the Companies Act, 1956 read with Rule 9 of the Company Court Rules, 1959 for directing the respondent to make the payments for use of the common facilities to the petitioner.

The petitioner-company was ordered to be wound up by this Court vide order dated 27.07.2001 on the recommendations of Board for Industrial and Financial Reconstruction. It has been pointed out by the petitioner that Punjab State Industrial Development Corporation Ltd., had promoted the petitioner and the respondent – company and the plants of both the companies were located at Naya Nangal adjacent to each other. Before the winding up, the petitioner and the respondent had entered into an

agreement on 01.03.1986 (Annexure P-2) for use of common facilities. In terms of aforesaid agreement, the water supplied by the Irrigation Department, Punjab and from Nangal Dam Reservoir was to be shared by both the companies including to share the expenses of pumping system, operation and maintenance. As per the said agreement, the petitioner was to maintain the said water pump including the pumping system situated at Nangal Dam Reservoir, which was located at a distance of 3 km and also water supply by the Irrigation Department. The said pumping station is now operated by the respondent-company. It has been pointed out that after the winding up order passed by this Court, pumping station is now being used by and for the benefit of the respondent-company and same is causing depreciation in the machinery i.e., water pumps belonging to the petitioner.

Thus, the petitioner has sought for two security guards to be deployed at the water pumping station, return of the one water pump, payment of lease money and to pay 50% of the salary of the staff employed on the common facilities and to pay adequate compensation for use of the machinery equal to the depreciation being caused in the machinery used for maintaining the water supply. Learned counsel for the petitioner has referred to Clause 2.4, 2.7 and 2.9 of the Agreement. As per the aforesaid Clauses of the agreement, the respondent has to share the expenses of running the water pump being common facilities, therefore, the respondent is liable to make payment of their share to the petitioner.

In reply, it has been inter alia pointed out that in regard

to common facilities, the respondent-company had filed CA No.458 of 2000 in which this Court passed the order on 04.08.2000 (Annexure R-11) that respondent would continue to use the common facilities, which existed prior to the recommendations of winding up by the Board for Industrial and Financial Reconstruction. In an another application bearing CA No.480 of 2001, this court passed an order on 24.08.2001 (Annexure R-12) that water supply to the respondent-company shall not be disconnected by the Official Liquidator. Later, the employees of the Company in liquidation filed an application before this Court to allow them to operate, maintain and provide security to the common facilities of raw water, pump house, raw water storage, electrical sub-station, drinking water and railway services in terms of the agreement entered upon by the parties. In the said application, the Court passed the following orders: -

> **"The prayer made by the applicants is to allow them to operate, maintain and provide security to the common facilities. Punjab National Fertilizers and Chemicals Limited has already been ordered to be wound up vide order dated 27.7.2001. The applicants are ex-ex-employees of the said company. They have the right only to recover their salaries by lodging a separate claim before**

the Official Liquidator. They cannot be allowed to operate, maintain and provide security to the sister concern Punjab Alkalis and Chemicals Limited.

In these circumstances, this application is hereby dismissed. It is also made clear in this order that earlier in the application made by Punjab Alkalies & Chemicals Limited I gave the directions that this company shall get water supply and the same shall not be disconnected by the Official Liquidator. This order is being complied with the Official Liquidator with the help of the staff provided by Punjab Alkalies & Chemicals Limited.

Directions are given to the Official Liquidator that let water supply may be maintained but the charges for operating the machinery in order to maintain the water supply shall be borne by the beneficiaries."

It has been further pointed out that the Official Liquidator has taken no steps against the ex-employees of the petitioner company, who are still living in the accommodation of the petitioner-company and using electricity and water supply facilities maintained by the respondent and no amount has been paid to the respondent in this regard. It has been pointed out that a sum of Rs.105.65 lacs on 31.03.2003 is payable by the petitioner. It has been further pointed out that prior to winding up both the companies were maintaining the common facilities as per the agreement and the expenses of maintenance and operation were being shared between both the companies. After the winding up order of the petitioner, water pump is being maintained by the respondent-company at its own expenses without any contribution from the petitioner and therefore, question of making any payment to the petitioner does not arise. It has been pointed out that in terms of the agreement, the petitioner is liable to pay the maintenance cost but the same is not being paid by the petitioner. It is further submitted that a sum of Rs.91.23 lacs has been incurred by the respondent on behalf of the petitioner.

The agreement between the parties contemplates sharing of expenses for maintaining common facilities. After the petitioner-company went into liquidation it has not engaged in any manufacturing activity. Though the employees of the petitioner are enjoying the residential accommodation provided to them as an employee of the company but the expenses of electricity bill etc of such residential accommodation is being borne by respondent. The common facilities are being maintained and operated by the

respondent-company for running of its plant and ancillary services. Thus, it is the respondent who is maintaining common facilities in its entirety without any contribution either in manpower or cost. As per the agreement, the maintenance of common facilities is obligation of both the parties. Since, the petitioner is unable to perform its part of the agreement, it is not understandable that how it can ask for the expenses from the respondent for maintaining common services.

In view of the said fact, I do not find that directions sought by the petitioner can be granted in his favour in the present petition.

C.P. stands dismissed.

July 28, 2010 **(HEMANT GUPTA)**
sonia/preeti **JUDGE**